

**Letters of Findings Number: 02-20120037P  
Corporate Income Tax  
For the Year 2009**

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**ISSUE**

**I. Tax Administration – Ten Percent Penalty – Underpayment of Tax.**

**Authority:** IC § 6-8.1-5-1; IC § 6-8.1-10-2.1; IC § 6-8.1-6-1; [45 IAC 15-11-2](#); Lafayette Square Amoco, Inc. v. Indiana Dep't of Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the imposition of the ten percent penalty for underpayment of tax.

**STATEMENT OF FACTS**

The Indiana Department of State Revenue ("Department") assessed Taxpayer a ten percent penalty for underpayment of tax by the original due date of Taxpayer's 2009 corporate income tax return. Taxpayer timely protested the assessment of penalty stating that it had reasonable cause for filing its original 2009 return the way it did therefore was not "willfully negligent," and asks for abatement of the ten percent penalty. A hearing was held on Taxpayer's protest and this Letter of Findings ensues. Additional facts will be provided as needed.

**I. Tax Administration – Ten Percent Penalty – Underpayment of Tax.**

**DISCUSSION**

The Department imposed a ten percent penalty on Taxpayer because the Department found that Taxpayer, having requested an extension to pay its taxes, failed to remit ninety percent of the full amount of corporate income tax on or before the original due date for payment.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Under IC § 6-8.1-10-2.1, penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1 further states in relevant part:

- (d) If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.
- (e) A person who wishes to avoid the penalty imposed under this section must make **an affirmative showing of all facts alleged as a reasonable cause** for the person's failure to file the return, pay the amount of tax shown on the person's return, pay the deficiency, or timely remit tax held in trust, in a written statement containing a declaration that the statement is made under penalty of perjury. The statement must be filed with the return or payment within the time prescribed for protesting departmental assessments. A taxpayer may also avoid the penalty imposed under this section by obtaining a ruling from the department before the end of a particular tax period on the amount of tax due for that tax period.

**(Emphasis added).**

The Department also notes that [45 IAC 15-11-2](#) further provides in relevant part:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, **the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.** Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;

- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

**(Emphasis added).**

The applicable statute is IC § 6-8.1-6-1, which provides in relevant part that:

- (a) If a person responsible for filing a tax return is unable to file the return by the appropriate due date, he may petition the department, before that due date, for a filing extension. The person must include with the petition a payment of at least ninety percent (90[percent]) of the tax that is reasonably expected to be due on the due date. When the department receives the petition and the payment, the department shall grant the person a sixty (60) day extension.
- (b) If a person responsible for filing a tax return has received an extension of the due date and is still unable to file the return by the extended due date, he may petition the department for another extension. The person must include in the petition a statement of the reasons for his inability to file the return by the due date. If the department finds that the person's petition is proper and that the person has good cause for requesting the extension, the department may extend the person's due date for any period that the department deems reasonable under the circumstances. The department may allow additional, successive extensions if the person properly petitions for the extension before the end of his current extension period.
- (c) If the Internal Revenue Service allows a person an extension on his federal income tax return, the corresponding due dates for the person's Indiana income tax returns are automatically extended for the same period as the federal extension, plus thirty (30) days. However, the person must pay at least ninety percent (90[percent]) of the Indiana income tax that is reasonably expected to be due on the original due date by that due date, or he may be subject to the penalties imposed for failure to pay the tax.

**(Emphasis added).**

Thus the question before the Department is whether or not Taxpayer paid at least ninety percent of its Indiana income tax that Taxpayer reasonably expected to be due on the original due date by that due date.

In a letter dated August 6, 2012, presented to the Department subsequent to the hearing, Taxpayer argues that the tax it paid on its original 2009 return reflected at least 90 percent of the tax "it reasonably expected to be due on the original due date of the return." (Taxpayer's emphasis). Taxpayer further asks the Department to note that:

[T]his provision does not say that 90[percent] of the tax ultimately due must be paid; the test is whether the taxpayer has paid 90[percent] of the tax that is reasonably expected to be due. As explained [...], Taxpayer used the best information available in determining what would reasonably be expected to be due for 2009, viz., the 2008 income.

In short, on or about April 15, 2010, Taxpayer reasonably expected that its total tax for 2009 would be approximately its 2008 tax liability as reported on its original 2008 return, which was \$1.1 million. Taking into account the \$1.4 million overpayment credit from 2008 applied to 2009, Taxpayer believed that it had paid well in excess of its reasonably expected liability for 2009 by the original due date of the return. Accordingly, there should be no penalty.

On October 4, 2010, Taxpayer filed its 2009 return showing the overpayment credit of \$1,409,813 carried over from the 2008 return and applied to its 2009 estimated payments account. The 2009 return, filed in October 2010, showed a balance due of \$1,327,765 which Taxpayer paid with its return (along with interest totaling \$26,628).

Taxpayer also points out that later, on May 31, 2011, it amended both the 2008 and 2009 returns showing significant overpayments for both years due to the application of net operating loss carrybacks. The Department notes that the amended returns are not legally relevant to this analysis, since the statutory consideration is of taxes as originally filed for 2008 and 2009. It should be noted that the 2009 tax due, as originally filed by Taxpayer, represented more than double the amount of tax that had been due for 2008, as originally filed. This doubling of tax due from one year to the next implicates income-generating activities during 2009 that could not have escaped Taxpayer's notice as it applied its standard business practices in accounting for its earnings.

A statement provided by Taxpayer in support of its protest of the penalty explains that during 2008 and 2009, the period during which the estimated and final payments were analyzed and made, Taxpayer was involved in a major reorganization that involved acquisitions by its affiliated group. Taxpayer indicates that the uncertain nature of the future business created a challenging projection process which was compounded by departures in Taxpayer's accounting and tax departments. Taxpayer argues that the "best available" information at the time was based on its 2008 income. Taxpayer states that as soon as the final taxable income was determined, and the return was prepared and reviewed, additional payment was made with the late filing of the 2009 return.

However, even considering Taxpayer's explanation, Taxpayer has not made an "affirmative showing" that during the business activities that transpired during 2009 it could not have been on notice that its income tax

obligations would increase for that year and that, therefore, "ordinary business care and prudence" would have required it to increase its estimated payments for 2009. The implication that Taxpayer was unable to fully attend to its tax filing obligations because its tax and accounting departments were in flux does not justify not exercising ordinary business care and prudence in accounting for its tax obligations.

The Department finds that Taxpayer has not made an affirmative showing of reasonable cause for underpaying its estimated 2009 taxes. IC § 6-8.1-10-2.1, IC § 6-8.1-6-1 and [45 IAC 15-11-2](#).

**FINDING**

Taxpayer's protest is respectfully denied.

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